

Congress intended that attorneys, like other professional employees, have the same right to be represented in bargaining units that Congress conveyed to other federal employees. Membership in a labor organization is in itself not incompatible with the obligations of fidelity owed to an employer by its employees. See *Dun & Bradstreet-II*, 240 NLRB 162, at 163 (1979) The American Bar Association's (ABA) Model Canons of Professional Responsibility is not controlling when making bargaining unit determinations under the Statute.

Some attorneys perform duties which otherwise cause them to be excluded from bargaining units. When considering the bargaining unit status of an attorney, a complete examination is made of all the relevant duties and responsibilities of the individual in the position to determine whether the position can be included in the unit or whether it must be excluded based upon a statutory requirement. For items related to specific confidential or federal personnel exclusions, consult those employee categories in *HOG 55* and *HOG 56* of this manual. For security work, see *HOG 61*. ***For substantive guidance on analyzing evidence, see the specific RCL that pertains to the appropriate exclusion being claimed.***

Where an attorney is being assigned duties or functions as a representative of management, the question may arise as to whether inclusion of this attorney would create a conflict of interest. In such situations, questions to explore at the hearing are:

- 1) Evidence and documentation of any advice and responses given or prepared by the General Attorney in labor relations and personnel matters to Agency personnel.
- 2) Evidence and documentation of representation of the agency in hearings before the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority and arbitration hearings, or any other legal proceedings involving unit employees.
- 3) Evidence and documentation of access to internal personnel policy documents and management's internal advice and counsel on labor-related matters. Cover the areas of contract negotiations, the disposition of grievances, action to be taken on proposed disciplinary and adverse actions and management's guidance to

supervisors and managers concerning such issues.

- 4) Examine the activities that the incumbent performs that are “sensitive” to the government and directly related to the protection and preservation of the military, economic, and productive strength of the United States, including the security of the government in domestic and foreign affairs, against or from espionage, sabotage, subversion, foreign aggression, and any other illegal acts which adversely affect the national defense. *Department of Energy, Oak Ridge Operations, Oak Ridge, Tennessee*, 4 FLRA 655 (1980).